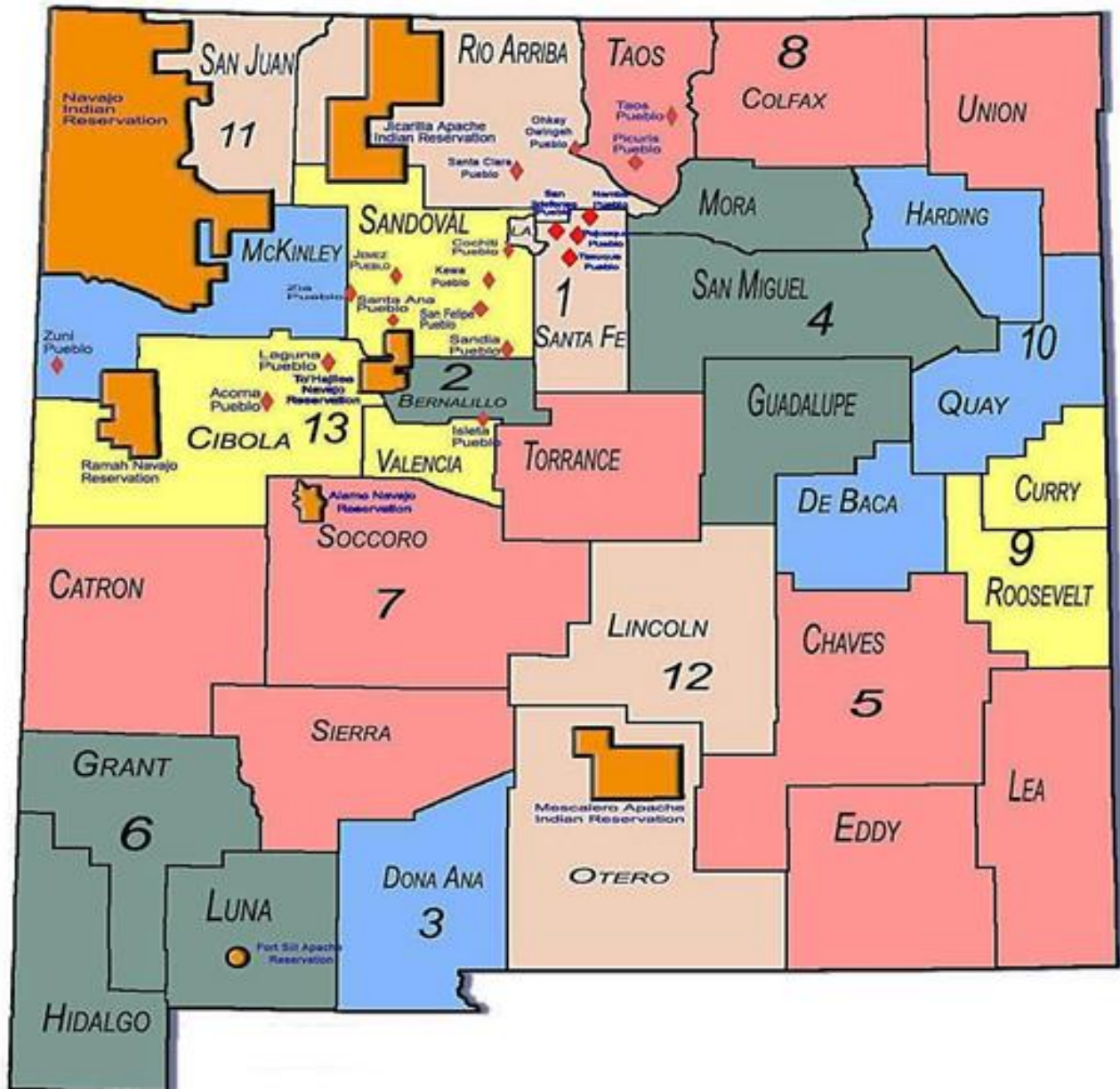




State of New Mexico
Tribal-State Judicial Consortium
Annual Report - 2016

TRIBAL NATIONS AND STATE JUDICIAL DISTRICTS



Message from the Co-Chairs

As Co-Chairs of the New Mexico Tribal-State Judicial Consortium, we would like to present the following 2017 Annual Report. This report highlights the work the Consortium has done throughout the year and activities planned for 2017.

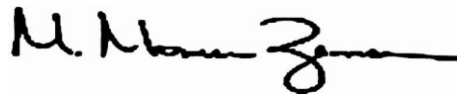
The Tribal-State Judicial Consortium has continued to work hard to establish and maintain local relationships and communications between both Tribal and State courts by working collaboratively on cross-jurisdictional issues. The important work of the Consortium is an ongoing process that will continue to provide a solid platform from which both judiciaries can build and support each other, and ultimately for the benefit of the citizens of the State of New Mexico.

We intend to keep up the momentum to achieve our common goals.

Thank you.



Judge William Bluehouse Johnson






Judge Monica Zamora



Mission

The Mission of the New Mexico Tribal-State Judicial Consortium is to encourage and facilitate communication and collaboration between State and Tribal Court judges on common issues such as child abuse and neglect, substance abuse treatment, domestic violence, domestic relations, child custody, child support, and juvenile justice. They also work together to address questions of jurisdiction and sovereignty as they relate to each particular issue. From this Mission Statement three goals have been set:

-  Create rapport between State and Tribal judges
-  Educate and train State and Tribal judges and leadership
-  Review and support implementation of State services for Native children and families on and off the reservation.

Consortium Quarterly Meetings in 2016

In January 2016, Consortium members attended the 23rd annual Children's Law Institute Conference in Albuquerque. The January quarterly meeting was also held at the conference site. This meeting featured two presentations, which involved mental health commitment orders from Special Master John Schoeppner as well as a presentation from Southwest Indian Law Clinic students and Professor Cheryl Fairbanks on Consensus Based Healing. In addition, recommendations to fill tribal and state member vacancies were presented and approved.

In February, the members attended the Children's Code Meeting facilitated by Beth Gillia of the Corinne Wolfe Children's Law Center. A brain storming session led into identifying the group's current most important issues:

- Access to services regulated and offered by the state/federal government agencies
- Training of staff and judges in both State and Tribal courts
- Establishing culturally appropriate therapeutic treatment facilities and services for Indian children and families.

Tesuque Pueblo hosted the Consortium meeting in April and generously provided the members and their guests with a delicious breakfast and lunch. Governor Rick Vigil addressed the attendees regarding behavioral health services and stressed the need for ongoing collaboration and communication between both judiciaries.

In July, the Consortium meeting took place at the Metropolitan Courthouse in Albuquerque. Information on ICWA training and data was provided by the Casey Family Programs collaboration between CYFD, the ICWA Consortium and NM Courts. Highlights from the Consortium Co-chairs and Angela Peinado, who attended the Tribal Law and Policy's National Tribal-State Forum

in Los Angeles, presented the highlights from the forum. Kevin Hammer, legal counsel for the Credit Union Association, presented concerns regarding tribal court probate orders and how they affect banking procedures.

The October quarterly meeting was held at the Second Judicial District's Children's Court Division in Albuquerque. Presenters included: MaryEllen Garcia with the Victim's Reparation Commission, who asked for input regarding their recent grant award and how it would best serve and be distributed to the native peoples of New Mexico who have fallen victim to crime; Patricia Galindo and Judge Dominguez presented the ICWA Designation Report, which offers statistics of children who are designated under ICWA in the State Court system; and Cynthia Chavers of CYFD presented on the updated Children's Code policy as well as the expansion of the Department's Title IV-E Guardian Assistance Program.

New Mexico Partners

Recently, the Casey Foundation invited the Consortium to participate in New Mexico Partners. The group consists of state and tribal stakeholders in the child welfare arena. The purpose of this partnership is to collaborate and calibrate our collective works toward a better outcome for Native children. The concentration for now is to communicate regularly and share information to keep up the momentum on our progress. The ultimate outcome for this partnership is to develop an in depth understanding of the work undertaken and accomplished by each stakeholder or agency, create a regular forum to stay informed of the progress, and eventually bring common information and initiatives together for a more unified and expedient outcome.

STRATEGIC PLAN BY COMMITTEE:

Over the last two years, the Consortium has created six committees in order to address and break down issues in a more manageable way. Each committee is assigned a chairperson and Consortium members can participate in more than one committee. Committee meetings are held at least once between each quarterly meeting, minutes are kept, and the chairs present on the status of work at the quarterly meetings. Below is a summary chart showing the current strategic plan for each committee:

Committee	Purpose	Action
<u><i>Rapport/ Communication</i></u>	Educate both State and Tribal Judges about cross-jurisdictional matters as well as recruit and encourage participation throughout the tribes and pueblos.	Continued outreach to legal community about the importance of understanding ICWA. Continue to recruit and encourage membership participation with the Consortium Guidance and participation given to law students who have committed to focus on Tribal Law.
<u><i>State Services</i></u>	Collaborate with state agencies and courts to adequately disburse state services to Native children and families.	Finalize and publish model tribal court orders on mental health and commitment currently in review by the State Supreme Court.
<u><i>Full Faith & Credit</i></u>	Educate stakeholders on FF&C as it relates to domestic matters and issue memorandum to the Consortium	Continue to assist with training and recognition of tribal orders throughout the state. Issue memorandum of findings regarding domestic matters for Credit Unions based on presentation in July 2016.
<u><i>ICWA/Title IV-E</i></u>	Educate stakeholders on ICWA rules and the recently implemented regulations.	Identify Native Children within the State Court system by creating an ICWA form for District Court Judges. Work with Casey Programs on data reporting and curriculum development.
<u><i>Drug & Wellness Courts</i></u>	Assist Tribal Wellness Courts in obtaining resources and training. Identify cross-jurisdictional opportunities to collaborate in adding Wellness Courts as an option to Native probationers seeking treatment for substance abuse.	Committee members will actively seek resources available for Tribal Wellness Courts through additional grant funding, training and cross-jurisdictional collaboration. Research and create model orders to assist in the recognition of tribal orders regarding drug/wellness courts. A member will continue to participate in the New Mexico Association of Drug Court Professionals.
<u><i>Juvenile Detention Alternative Initiative (JDAI)</i></u>	Collaboration between State and Tribal Courts to implement JDAI programs across the state.	Continue work with the Statewide Leadership Team in expanding JDAI from the Isleta Pueblo pilot program to the Navajo Nation and on to the rest of the state

COMMITTEES IN DEPTH:

Rapport/Communication Committee

The Rapport/Communication Committee continues to encourage and promote relationships between State and Tribal Court judges on common issues, by sharing the Consortium's projects and accomplishments with the state and tribal communities. As part of the judicial community outreach, we have forged a strong relationship with the Southwest Indian Law School Clinic (SILC), a clinical program of the UNM School of Law. The Consortium participated in moot court oral arguments on behalf of the Native American law students at the school, the Native American Law Students Association (NALSA) Moot Court team oral arguments in March 2016 and the Tribal Appellate Advocacy class Moot Court Final Oral Arguments on December 1, 2016. Members of the Consortium were invited to administer the oath to incoming law students throughout the year. Judge Zamora (Court of Appeals) and Judge Johnson (Acoma) participated in January for the Spring Semester students; Judge Zamora and Judge Torrez (Zia) participated in May for the Summer Semester students; and Judge Zamora and Judge Eisenberg (Taos) participated in August for the Fall semester students. The swearing in ceremonies are an excellent opportunity for the Judges to provide encouragement to the law students as they begin their legal careers as practicing attorneys and share their experience and words of wisdom.

The Judges have also had several opportunities to speak with the SILC students during the semester to share their experiences as practitioners and as judges. Judge M. Monica Zamora and her father, Retired District Court Judge and trial lawyer Matias Zamora, had one such opportunity. See the full article:

"Law is always searching for the truth" and other words of wisdom

July 28, 2016 - Tamara Williams

Retired District Court Judge and trial lawyer Matias Zamora and Court of Appeals Judge M. Monica Zamora ('87) shared their love of the law and tips from their extensive legal experience with students in the Southwest Indian Law Clinic (SILC).

The meeting was held at the Court of Appeals, next door to the law school.



Above right: Retired District Court Judge and trial lawyer Matias Zamora (seated) and Court of Appeals Judge M. Monica Zamora (second from left), shared tips on practicing law with students in the Southwest Indian Law Clinic and their supervisor, Visiting Professor Cheryl Fairbanks (right).

Judge Monica Zamora first met the class when she performed the SILC swearing in ceremony in May.

She introduced the class to her father, Matias Zamora, who practiced primarily as a personal injury lawyer. Both are experienced trial lawyers and judges. The tips they shared with the students are summarized below:



Law is always searching for the truth

The law is an honorable profession, and honest lawyers always succeed. Be truthful to yourself and to your client, the judge, and the jury.

Left: Judge M. Monica Zamora, Matias Zamora and Visiting Professor Cheryl Fairbanks at the Court of

Erin McMullen ('16) said this advice resonated with her. "Mr. Zamora stressed that we are entering an honorable profession and even though we will come across attorneys that are less than honorable, these attorneys will fall by the wayside, that it is the honest ones that make it in this profession."

Know your case

Study your case and learn it inside and out. Be very thorough in preparing so you don't get caught off-guard.

Visiting Professor Cheryl Fairbanks said this advice rang true for her. "We saw Mr. Zamora's passion for the law in how he emphasized the importance of thorough preparation," she said. "If you're stymied, roll up your sleeves and get into the case. The answers will come."

Engage with people

Use your knowledge of the case and memory instead of relying heavily on your notes for opening and closing arguments and deposition questions.

Mr. Zamora said he initially viewed jurors as "cardboard faces." When he spent time getting to know them and relate more to them, he saw them as real human beings trying to do an honest job.

Judge Zamora said she learned that lesson the hard way when she was working with her father. She had prepared her questions for a witness she was about to depose and forgot them in her office. As she was walking back towards the conference room her father asked her what she was doing. She informed him that she had forgotten her questions and was headed to the deposition. He threw her notes away and told her if you don't know your case well enough to carry a conversation with this witness, then you had no business setting the deposition. "I realized how distracting it was to keep looking down at a paper with questions on it," said Judge Zamora. "The person you're interviewing looks down at your paper, too. It's much better to engage them in a conversation and then start asking questions naturally."

Be professional

Mr. Zamora had extensive experience getting along well with opposing attorneys. He recounted a story of driving to an out-of-town courtroom with the opposing attorney, sharing the same hotel, arguing their cases during the day, then going out to dinner together. If the opposing counsel is nasty, don't get caught up in it. It's important to be professional at all times.

Use your creativity and imagination

Effective advocates need to use their creativity and imagination more, especially in the courtroom. Judge Zamora shared how she effectively developed an accident reconstruction to demonstrate difficult concepts to the judge and jury.

"We don't use our imagination enough as lawyers, but it's so important," said Fairbanks.

Parting words

Afterwards, the Zamoras chatted with the students and congratulated them on their time in Clinic. Mr. Zamora concluded, "Be active in the State Bar, stay close to your law school and join professional organizations."

The SILC students have also had the opportunity to present to tribal and state judges. At our April meeting, Phillip Huntsman presented a grassroots history of ICWA and information on Tribal courts. He also provided a review of Full Faith and Credit (FFC) court cases and a discussion about the application or non-application of FFC to tribal orders by state courts and FFC to state orders by tribal courts. In June, SILC law students Cristy Chapman, Louis Mallette, Erin McMillian, Brian Rowland, and Professor Cheryl Fairbanks were invited to speak on peacemaking at the annual New Mexico Judicial Conclave, an event where all levels of State and Tribal judges attend.

In June, the Consortium was invited to participate in a national Tribal-State Forum in Los Angeles, sponsored by the Tribal Law and Policy Institute. New Mexico was one of thirteen states invited to this event. Each of the states were at various stages, ranging from beginning to well-established consortiums. Each of the states were asked to present their accomplishments, short term projects, long term projects, and challenges. The common challenge amongst all the participants was funding.

New Mexico was proud to explain that a large part of its success is the professional relationship of its Consortium members. This group is willing to have honest conversations while respecting each other's opinions and positions. We were also able to boast about the Administrative Office of the Courts staff assigned to the commission – Angela Peinado, program manager and Jennifer Vieira, administrative assistant. Their organization, attention to detail, and follow up has been a significant contribution in making our Consortium a success.

Among the accomplishments we have had as a Consortium are the number of non-members who attend our quarterly meetings. Word has gotten out about the Consortium's projects and as a result, interested parties have attended our meetings to provide additional information, collaboration, or offer their services to assist in reaching our goals. One such example is the Tribal ICWA Consortium, which consists of almost all the New Mexico tribes and their stakeholders in the child welfare field. Donalyn Sarracino (Acoma) and Jacqueline Yelch (Isleta) have been successful in setting up this organization. They have been responsible for the increase in membership, and for providing training opportunities. They have also been very generous in sharing their projects and accomplishments with the Consortium. The Consortium is also able to direct them to resources and share professional experiences and expectations with them both in tribal and state court.

State Services

The primary action item of the State Services Committee in 2016 has been to obtain state recognition of tribal court orders for allowing tribal members access to state services. In sum, the committee drafted model adult and juvenile involuntary commitment orders, which were submitted to the New Mexico Supreme Court for its consideration and adoption.

The proposed model orders are intended to be used by tribal courts for committing individuals to state mental health facilities. The basic idea is that these model orders would be recognized by state courts, without having to take the additional step of a district court domesticating the tribal court order. This procedure would be similar to the way that Project Passport enhances the ability of tribal courts to have its protection orders enforced by state courts. (See District Court Civil Form 4-965, authorized by Supreme Court Order No. 08-830-40). The proposed orders incorporate state legal requirements for involuntary commitments.

These proposed model orders are a product of two years of work by the Tribal State Consortium's State Services Committee. The Consortium has extensively reviewed the draft orders and the background documents over the past year and a half. The draft orders have been developed and modified in response to Consortium comments. In addition, we have sought and incorporated the insights of state stakeholders who are knowledgeable in this area.

Our effort is predicated on accomplishing two important goals. The first goal is pragmatic. We want to ensure access to needed state services, particularly mental health services, for Native American youth and families. Many Native Americans are court ordered to obtain needed services through tribal courts. With the proposed orders, the juvenile or adult would be able to access state mental health services, the tribal court would retain jurisdiction over the individual, and the individual would still be connected to their tribal community.

Additionally, the tribal court can use its authority to better monitor and ensure that the tribal community and its customs and traditions are incorporated as part of the treatment. As a practical matter, enhancing tribal jurisdiction by having tribal orders automatically recognized is necessary to ensure access to mental health services to our Native American communities.

Beyond pragmatism, studies demonstrate this approach should improve the success rate for the provided services. State court recognition of these model orders can assist in promoting culturally sensitive adjudications regarding youth and their families. Studies by the Annie E. Casey Foundation demonstrate that culturally sensitive programs, including those that promote tribal customs are more effective in reducing recidivism, providing restorative justice and reform. See e.g., Mendoza, Natalie C. Alternatives to Incarceration for Tribal and Latino Juveniles, 49 Feb Advocate (Idaho) 10 Advocate (February 2006). Related to this are studies from the Harvard Project on the "Nation Building Model" that show that strengthening tribal sovereignty, tribal tradition and institutions is a key to tribal community success. See Seelau, Ryan, The Kids Aren't

Alright: An Argument to Use the Nation Building Model in the Development of Native Juvenile Justice Systems to Combat the Effects of Failed Assimilative Policies, 17 Berkeley J. Crim. L. 97 (Spring 2012).

The continued and improved exposure to tribal traditions is more likely if tribal courts continue to have authority over the individuals ordered into the mental health facility. It is also less likely to alienate youth families from their tribal community and tribal customs. Further, reducing jurisdictional conflicts between tribal state courts should be more effective as the court action follow the people or acts that are subject to the order. Social problems, from mental health to drug addiction, do respect jurisdictional boundaries. We would do much better in using our collective, but scarce, judicial financial resources more effectively if we promote the type of cooperation and collaboration the proposed orders are intending to accomplish.



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The second goal seeks to find a partial resolution of the conundrum regarding whether tribal court orders receive comity or full faith and credit in state courts. Initially, New Mexico held that tribal court judgments were within the scope of the federal full faith and credit statute, 28 USC §1738. See *Jim v. CIT Financial Serv. Corp.*, 1975-NMSC-019, 87 N.M. 362 (“Navajo Nation is a ‘territory’ within the meaning of that statute” and therefore obtains full faith and credit). The New Mexico Court of Appeals reinforced the decision. See e.g., *Halwood v. Cowboy Auto Sales, Inc.*, 1997-NMCA-098, 124 N.M. 77. However, there has been debate over that legal conclusion. See *Garcia v. Gutierrez*, 2009-NMSC-044, 147 N.M. 105. It is no longer certain whether tribal court decisions receive full faith and credit or comity. While the *Garcia* court did not explicitly overrule *Jim*, it did not provide full faith and credit for the tribal court in regards to the child custody decision. Instead, it urged the tribal and state courts to work together.

The model orders are intended to foster the cooperation that *Garcia* encouraged. The model orders also borrow from Congress’ approach of providing recognition of tribal court orders when those orders meet certain requirements. Under the Violence Against Women’s Act (VAWA), Congress required states and tribes to give full faith and credit to each jurisdiction’s protection orders if certain due process requirements are met. See 18 U.S.C. §2265. This approach allows for better protection against domestic violence by enhancing victim safety, allowing a properly executed protection order to follow the victim and be enforceable regardless of the issuing jurisdiction. In spite of VAWA some victims continued to have problems getting protection orders enforced, particularly those issued by tribal courts. So, in New Mexico we took it a step further than Project Passport. Under New Mexico Supreme Court oversight and approval we developed a uniform cover sheet for protection orders so that all domestic abuse protection orders – tribal or state, would be recognized and enforced in the other’s jurisdiction. Moreover, the cover sheet is part of the order and sets out minimum requirements needed for this recognition.

Our effort is similar to Project Passport. We want a common order that sets forth the minimum requirements needed for an involuntary commitment. New Mexico has already endorsed this

approach for juveniles. Pursuant to NMSA 1978, Section 32A-1-8(E)(2009), a tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. In addition, pursuant to NMSA 1978, Section 32A-6A-29(2007) Native American juveniles are to have the same rights as other children of the State for inpatient and outpatient care. Unfortunately, there is a lack of state legal authority for Native American adults in need of state services.

The proposed model orders attempt to set forth the requirements for involuntary commitments--- NMSA 1978, Section 32A-6A-22 (2007) for juveniles and Sections 43-1-11 and -13 (2009) for adults. In the spirit of Garcia, we would like to use this approach as the groundwork for gaining recognition of tribal court orders for other state services for Native American youth and adults. The fundamental benefit of this collective approach is the continuing cooperation and collaboration between tribal and state courts for the benefit of the citizens of New Mexico.

Plans for 2017 and Beyond:

Our next steps and other committee projects include:

- Developing model orders for other services
- Examine laws of other states that provide procedures for recognizing tribal court orders under comity and/or full faith and credit
- Develop standards for lay counsel or lay advocate program to increase representation in tribes, working with CASA to assist in training GALs
- Improving notification by state of tribal youth in state custody
- Provide index and/or online directory for state services



Full Faith and Credit

The Full Faith and Credit Committee works on educating and training state and tribal judges. One of the more critical topics is in understanding and implementing the constitutional concept of Full Faith and Credit provided in the US Constitution between each of the states and the federal court. Unfortunately, there is a question whether this principle applies between the state and tribal judiciary. This is a critical issue for states, like New Mexico, that have tribal courts. Ideally, both courts should recognize each other's orders when presented.

New Mexico leads the Nation in recognizing the tribal court orders by both statutes and case opinions. The two cases on FFC in New Mexico are *Halwood v. Cowboy Auto Sales*, 1997-NMCA-098, 124 N.M. 77, 946 P.2d 1088 and *Jim v. CIT Financial Servs. Corp.*, 1975-NMSC-019, 87 N.M. 362, 533 P.2d 751 (S. Ct. 1975). These cases held that tribal court orders that provide minimum due process are entitled to Full Faith and Credit. Additionally, NM Uniform Interstate Enforcement of Domestic Violence Protection Orders 40-13A-1 specifically mandates that tribal court orders regarding protective orders shall be honored by state courts. The New Mexico State

Legislature is to be commended for their recognition of this order. There remains a need for the State Legislature to enact similar legislation on a number of topics.

Many of the challenges concern the general lack of knowledge about the current law among the state and tribal judges. For example, the Indian Child Welfare Act mandates Full Faith and Credit in child custody issues and the Consortium has made great strides in teaching state judges on how best to implement the ICWA in their courts. There are other federal laws that mandate FFC and these are taken up by the FCC Consortium Committee. (See Gutierrez Case) Of these, perhaps the Violence Against Women Act is of most importance. The federal Act requires each jurisdiction to give Full Faith and Credit to protective orders issued by the respective state or tribal court. (See Uniform Interstate Enforcement of Domestic Violence Protection Orders 40-13A-1.) Both jurisdictions' law enforcement agencies play a vital role in the enforcement of these orders. Without enforcement, victims of domestic violence have no protection. Project Passport is a nation-wide effort to address this issue by designing a "front page" that provide sufficient information to allow a law enforcement officer to recognize and enforce the protective order. In addition, 18 USC §2265e allows tribes to exclude non-Indians from their jurisdiction who violate a state or federal protective order.

Plans for 2017 and beyond:

As set out above, the FFC Committee has much work to address:

- Continue to provide updates and awareness training to both state and tribal judges. This is the primary mandate of the Consortium and specifically, FFC.
- Local CYFD management needs to keep in communication of tribal social service workers and vice versa. The Consortium will foster their communication by addressing their specific needs to share resources.
- Whenever possible or whenever invited, member judges of the Consortium should present on FFC and other topics of interest to state judges and special service providers at conferences in order to increase awareness and foster communication.
- A University of New Mexico law student extern has offered to research Full Faith and Credit as well as Comity and draft a position paper. A brief will be completed on recent court cases, which affect full faith and credit. A cover sheet for full faith and credit will also be generated and sent to the Supreme Court Rules Committee for review.
- The Committee will also work with both State and Tribal judges to set up regional meetings to provide information and conduct listening tours to identify needs and concerns.

ICWA/Title IV-E



On February 25, 2016, the Committee discussed the draft document ‘*Tribal Rights Under ICWA*’ as a tool for judges, tribal officials and families impacted by child welfare. Work continued on updates to the ICWA Bench Card to include references to the 2015 BIA Guidelines for State Courts and Agencies.

In April 2016, Judge Romero participated in the Tribal Judicial Leadership Group meeting in Cherokee, NC. The meeting, sponsored by the National Council of Juvenile and Family Court Judges, Department of Justice and Office of Violence Against Women, addressed numerous issues, including utilizing a more trauma-responsive approach to child welfare, juvenile justice and family court proceedings in both tribal and state courts.

In June 2016, Judge Romero attended the 29th Sovereignty Symposium in Oklahoma City and presented on ICWA and Preventing Sex Trafficking and Strengthening Families Act (P.L.113-183). Ideas were exchanged on the proposed Department of the Interior, Bureau of Indian Affairs Final Rule impacting full implementation of ICWA in state courts. Also in June 2016, BIA announced the release of the Final Rule that added a new subpart to the Department of the Interior regulations implementing ICWA. A purpose of the new regulations is to promote the uniform application of ICWA in all jurisdictions. The effective date for implementation of the Final Rule is December 12, 2016.

At the October 2016 Quarterly Meeting of the Consortium, the Committee proposed that efforts be made to promote greater awareness and education for state and tribal judges and tribal governments on the full implementation of ICWA pursuant to the new ICWA Regulations. As a result, Utah Court of Appeals Judge William Thorne (Ret.) was contacted and agreed to make a presentation on the new ICWA Regulations and Guidelines at the 2017 Judicial Conclave.

Finally, on October 26, 2016, numerous Consortium and ICWA/IV-E Committee representatives participated in the ICWA Conference: The New Regulations, hosted by the Pueblo of Pojoaque. The conference provided a collaborative opportunity for discussion and education on how we will move forward in New Mexico as the new ICWA Regulations take effect.

Drug & Wellness Courts

Over the last year, the Drug and Wellness Courts Committee has been working to increase collaboration and consultations within the state between Drug Courts and Tribal Healing to Wellness Courts. Both offer an approximate year of intensive, structured outpatient treatment and

court supervision that follow the national best practices standards and have proven successful alternatives to jail for non-violent criminal offenders who are struggling with substance abuse. Healing to Wellness Courts are similar to Drug Courts in that they are both aimed at assisting non-violent addicted criminal offenders to get clean and maintain sobriety. In addition, Wellness Courts utilize the unique strengths and resources of each tribe to offer a culturally relevant program for the participant to succeed in rejoining their tribe as a healthy and contributing member. By diverting native criminal defendants from the state criminal justice system into these “specialty courts” probationers are required to follow all conditions of their probation and successfully complete a culturally based and stringent outpatient treatment program that typically takes a year to complete.



Recently, a Memorandum of Understanding (MOU) was signed between the Taos Pueblo Tribal Court and the Taos County Magistrate Court, which perfectly realizes one major goal of the committee. The main idea behind the MOU is “that enrolled tribal members of Taos Pueblo or other Indian tribes convicted of misdemeanors in the Taos County Magistrate Court who are in need

of addiction treatment services shall have the option of requesting the Magistrate Court to participate in the Taos Pueblo Wellness Court as a condition of their Magistrate Court probation. Judge Timothy Eisenberg of the Taos Pueblo Tribal Court and Taos Magistrate Judges Ernest Ortega and Jeff Shannon collaborated to author and finalize the MOU. This historic MOU is the first of its kind in New Mexico and part of only a handful of other similar Tribal and State Court collaborations nationwide.

In addition to his other impressive accomplishments, Judge Timothy Eisenberg also represents the Consortium by attending and participating in the New Mexico Association for Drug Court Professionals (NMADCP).

Plans for 2017 and beyond:

The Committee will continue to work on the following:

- Identify and publish grant and foundation funding sources to the Consortium to support Drug Courts and Healing to Wellness Courts.
- The committee will continue to work on developing model forms to encourage jurisdictional transfers of individuals between Drug Courts and Healing to Wellness Courts. Currently these types of transfers occur around the state but only with certain judges and in certain jurisdictions. The goal is to have more structured collaborative processes in place as is currently being done by the Taos Pueblo Court and the Taos Magistrate Court.
- A memorandum in support of Drug Courts and Healing to Wellness Courts for proposed adoption by the Consortium. This will include a review of procedures and proposed adoption of uniform standards, recommendations regarding state/tribal collaboration to allow transfer of criminal defendants to courts based on their residence location, and statistics showing the success of Drug Courts and Healing to Wellness Courts.

Juvenile Detention Alternative Initiative (JDAI)

The Statewide Leadership Team consists of statewide juvenile justice stakeholders invested in expanding the Juvenile Detention Alternatives Initiative (JDAI) statewide. In 2013, it was decided that while JDAI had been established in a few counties, it was necessary to put a plan in place to expand it throughout the state. The stakeholders include representatives from the New Mexico Supreme Court, Court of Appeals, and District Court, Children Youth and Families Department, New Mexico Association of Counties, Annie E. Casey Foundation, Burns Institute, and Juvenile Justice Advisory Committee. This team meets on a quarterly basis and have entered into a memorandum of understanding outlining each of their responsibilities.

The first county selected to establish a JDAI program was San Juan County because of its large Native American population. In April, Justice Barbara Vigil and Judge Monica Zamora met with President Russell Begaye of Navajo Nation to introduce him to JDAI and invite him and his respective stakeholders to participate in this expansion. President Begaye was very receptive to the idea and identified key stakeholders who could assist the project.

Former Judge Renee Torres of Isleta Pueblo suggested that the Consortium look to the Isleta Tribal Court as a smaller jurisdiction to start a JDAI pilot project. The surrounding counties, Valencia and Bernalillo who have established JDAI programs, agreed to participate. The W. Haywood Burns Institute (BI) offered its services in guiding Isleta through the process.



BI is in pursuit of establishing equitable and excellent youth justice systems that are used sparingly and appropriately. Every year, an estimated 300,000 young people are admitted to detention facilities nationwide and nearly 55,000 are held in detention on any given night. There is ample research about the dangers of detention and the profound and lifelong negative consequences and how they impact youth and families. The BI believes that the combined wisdom and influence of justice professionals, engaged communities and families afford the best opportunity to implement a system that is restorative, humane and accountable for public safety. This child well-being framework asserts the fundamental rights of all young people, regardless of their race, ethnicity, place of origin, or gender orientation. The BI works towards realizing a justice system that acknowledges normal adolescent development for children in trouble with the law while responding with fairness and equity.

In the 2013 report, *A Roadmap for Making Native America Safer, Report to the President and Congress of the United States*, the Indian Law and Order Commission noted that Tribal youth who live on reservations are under the authority of one of several jurisdictional arrangements; they may be subject to many different regimes: Federal, Tribal-Federal, State, or State-Tribal.

Native youth may become part of state juvenile justice systems if they commit an offense outside of tribal land or in a Tribal community where State criminal jurisdiction extends to Indian Country under federal law. In state juvenile systems, there is generally no requirement that a child's tribe be contacted when they are taken into custody. While the State of New Mexico does have a

notification requirement, its breadth, ambiguities and interpretation have resulted in its limited effectiveness. Thus, once Native youth are in the system, their unique circumstances are often overlooked and their outcomes are difficult to track. (*A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems*, Neelum Arya and Addie Rolnick, at 20, Campaign for Youth Justice Policy Brief 2008.) The youth effectively “go missing” from the Tribe.

Many states working to implement the Juvenile Detention Alternatives Initiative, have significant Native youth within their systems. Despite data limitations, we know that Native American youth are overrepresented in the youth justice system. Based on a 2013 one day count of youth in detention facilities, Native American youth were nearly three times more likely to be securely detained than White youth. For every 100,000 White youth in the U.S., 29 were detained; for every 100,000 Native American youth, 75 were detained. Disparities are particularly acute in out of home placements. Based on the same one day count, Native American youth were nearly four times as likely as White youth to be in an out of home placement as the result of a court ordered disposition. For every 100,000 White youth in the U.S., there were 69 incarcerated out of home; for every 100,000 Native American youth, there were 254. Additionally, while out of home placement rates for White youth have decreased by more than 50% over the past fifteen years, the reduction for Native American youth lags behind with a 31% reduction.

In its report, *Ending Violence so Children Can Thrive*, the United States Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence stated their support for substantial reform of the youth justice systems impacting American Indian/Alaska Native (AI/AN) youth. The committee’s findings and recommendations include that federal, tribal, and state justice systems should only use detention of AI/AN youth when the youth is a danger to themselves or the community. It should be close to the child’s community and provide trauma-informed, culturally appropriate, and individually tailored services, including reentry services. Alternatives to detention such as “safe houses” should be significantly developed in AI/AN urban and rural communities. The committee further noted that the use of secure detention is not effective as a deterrent to delinquent behavior, risky behavior, or truancy.

For over twenty years, the Annie E. Casey Foundation’s (AECF) Juvenile Detention Alternatives Initiative (JDAI) has worked in jurisdictions across the country to reduce the overreliance on secure detention and to create a fairer, equitable, more efficient and effective youth justice system. At the end of 2013, JDAI reached over one-fourth of the total U.S. population and was operating in more than 250 counties and 1 tribe (the Mississippi Band of Choctaw Indians) spread across 39 states and the District of Columbia.



The Annie E. Casey Foundation's most recent data showed that among local JDAI sites, the total average daily population was 43 percent lower in 2011 than in the year before joining JDAI. Thirty-four percent of the reporting sites had reduced their average daily population by more than half since implementing JDAI. The data also showed that reporting sites admitted 59,000 fewer youth to detention in 2012 than in the year prior to launching JDAI, a drop of 39 percent. Moreover, the average daily population of youth of color fell by 40 percent across all JDAI sites nationwide, nearly the same decline seen for white youth, even though youth of color have risen significantly as a share of the total youth population. JDAI jurisdictions detained 2,268 fewer youth of color per day in 2011 than they did prior to beginning JDAI.

New Mexico has 291,512 Indian citizens, which comprise nearly 10.5% of the state's entire population. There are 22 Indian tribes in New Mexico – 19 Pueblos, two Apache tribes and the Navajo Nation. Each tribe is a sovereign nation with its own government, life-ways, traditions, and cultures. Each tribe has a unique relationship with the federal and state governments.

The Pueblo of Isleta (POI), is a Native American tribe that sits within the jurisdiction of a JDAI site, Bernalillo County, New Mexico. The POI does not run its own juvenile detention center; rather the POI relies on the use of detention beds from county run facilities. In reality, the POI are but one of many Pueblos, Tribes or Nations that are similarly situated in JDAI sites across the country which historically have not been included in JDAI local or state scale efforts. As part of the POI's inclusion in New Mexico's JDAI state scale efforts, the POI will be contributing to advancing the JDAI national networks to include all Native Pueblos, Tribes, and Nations in local and state scale reform efforts. State jurisdictions can benefit from the values and principles of Native peoples. For example, for the POI, the use of detention is not a culturally or historically acceptable response to youthful misbehaviors or low-level offenses. The POI are a strong and proud people who carry and value their youth and give true meaning to the least restrictive alternative.

The partnership with the POI has the potential to inform JDAI sites across the country on best practices to improve life outcomes for Native American youth impacted by the youth justice system in their jurisdiction. Moreover, it should help to bring Native Americans out from the other side of the mirror.

Results to date include:

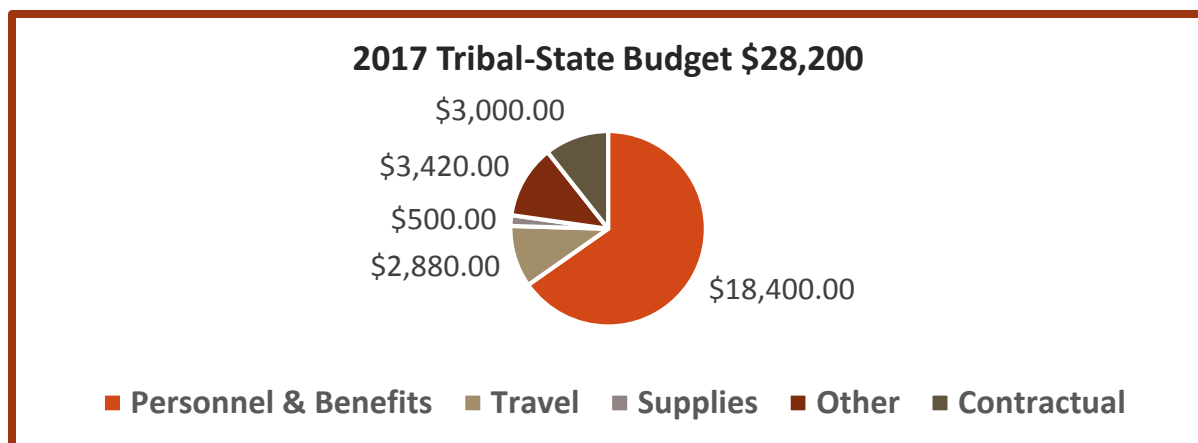
- Sustained communications and relationships with the New Mexico Tribal-State Judges Consortium as we worked to establish relationships and initial knowledge transfer regarding JDAI.
- Established relationships with elders, Lt. Governor, court personnel, child-serving agency representatives (i.e., behavior health and social services), school and community-based organization representatives.
- Assist in establishing the Pueblo of Isleta as a JDAI site including a contractual relationship between the Isleta and the Annie E. Casey Foundation (AECF). AECF will be providing the Isleta with a grant to assist in the implementation of JDAI.
- Learned about the New Mexico Children Youth and Family Department's data capacities and the type of data collected relative to Isleta youth being processed and detained in state detention facilities. This was a necessary step towards the development of a detention utilization study for the Isleta. Note: the Isleta do not have their own detention facility. Isleta youth processed through the Isleta court and/or the state courts are detained in state detention facilities.
- Conducted a JDAI 101 with Isleta child serving agency representatives (behavior health and social services), court personnel, Lt. Governor, law enforcement, school representatives, and representatives from community based organizations. Representatives from Bernalillo County (JDAI model site) and the New Mexico Children Youth and Family Department participated as faculty to describe their role in New Mexico's JDAI state scale efforts and their role in the Isleta's future JDAI efforts.
- Participated in a model site visit to Bernalillo County with the Mississippi Band of Choctaw Indians to learn more about local reform efforts taking place. Pueblo of Isleta representatives had the opportunity to learn how JDAI is applied within tribal communities.
- Participated in a site visit, along with representatives from the Annie E. Casey Foundation (AECF) that included a tour of the Pueblo and stops at Behavioral Health and Social Services. The site visit culminated with an Isleta community luncheon attended by: AECF representatives, BI TA providers, Isleta elders, the Isleta Governor, two Lt. Governors, all but one of the Isleta Tribal Council members, court personnel, child-serving agency representatives, Isleta Chief of Police, school representatives, and representatives from community based organizations. The program included an introduction to the AECF representatives and their work and a brief overview of JDAI. The next steps in implementing the initiative are conducting a system assessment and developing a report on detention utilization. The purpose of a system assessment as well as the roles of those to be interviewed were discussed with the Isleta community at length. Isleta values and principles that align with JDAI were shared and there was substantive engagement by the stakeholders participating in the community meeting.
- A delegation of POI stakeholders attended the 2015 JDAI National Inter-site Conference. The conference was attended by over 900 participant peers from JDAI sites throughout the country. The day and a half conference proved helpful to the POI delegation in gaining further understanding of and envisioning JDAI's applicability to the POI.
- Conducted a system assessment to: 1) better understand the workings of the Isleta's youth justice system; 2) acquire an understanding of how Isleta youth are processed in the tribal

and/or state courts; and, 3) to inform the development of a year 1 work plan. BI TA providers spent two days conducting a qualitative assessment. Multiple stakeholders, along with parents and grandparents, a representative from the New Mexico Children's Youth and Family Department and co-chair of the New Mexico Tribal-State Judges Consortium were interviewed during the course of the system assessment.

- A debrief of the system assessment was conducted with relevant POI stakeholders including the Judges. The debrief was well received and very productive; governing structure and coordination were deliberated and decided. The technical assistant team plans to make a site visit in January 2017 to commence the development of a work plan.

Tribal-State Consortium Funding

The Tribal-State Consortium received \$28,200 in State General Funds, which also serve as the match for the Federal CIP Grant, supporting Children's Court Improvement Commission.



Summary

The New Mexico Tribal-State Judicial Consortium has been recognized locally and nationally for its revolutionary work as the state and tribal judges continue to focus on initiatives that seek continuous quality improvement. We are proud of our efforts and accomplishments as we continue to grow and cultivate the relationships and collaboration between the two judicial systems for the benefit of all New Mexico citizens.

Committee members

Rapport/Communications

M. Monica Zamora, Court of Appeals (Co-Chair)
 William “Bluehouse” Johnson, Acoma Pueblo (Co-Chair)
 Justice Barbara Vigil, NM Supreme Court
 James Weschler, Court of Appeals
 Kim McGinnis, Pojoaque Pueblo
 John F. Davis, 13th District Court
 William X. Parnall, 2nd District Court
 John Romero, 2nd District Court

State Services

Randy Collins, Pueblo of Acoma (Chair)
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 Kim McGinnis, Pueblo of Pojoaque
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 John J. Romero, 2nd Judicial District
 Rene Torres, Zia Pueblo
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 Geoffrey Tager, Ohkay Owingeh
 Patricia Galindo, Administrative Office of the Courts
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 Justice Barbara J. Vigil, NM Supreme Court

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 Michelle Brown-Yazzie, Tesuque Pueblo
 Beth Gillia, Corine Wolfe Children’s Law Center (UNM)
 Vincent Knight, Isleta Pueblo
 William “Bluehouse” Johnson
 David Adams, U.S. Attorney’s Office
 M. Monica Zamora, Court of Appeals

JDAI

M. Monica Zamora, Court of Appeals (Chair)
 Justice Barbara J. Vigil, NM Supreme Court
 Rene Torres (Zia Pueblo, Metropolitan Court)
 Michelle Brown Yazzie (Tesuque Pueblo)

Drug Court

Bruce Fox of Laguna Pueblo (Chair)
 Maria Dominguez of Bernalillo County Metropolitan Court
 Timothy Eisenberg, Taos Pueblo Tribal Court
 Kim McGinnis of Pojoaque Tribal Court

APPENDIX INCLUDES THE FOLLOWING:

SUPREME COURT ORDER WITH MEMBERSHIP ROSTER

MOU BETWEEN TAOS COUNTY MAGISTRATE COURT & TAOS PUEBLO COURT

